

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Long Term Care and Community Alternatives

4 (Amendment)

5 907 KAR 1:044. Community Mental Health Center Services.

6 RELATES TO: KRS 194A.060, 205.520(3), 205.8451(9)~~[(10)]~~, 311.530, 314.042,
7 319.050, 319.053, 319.056, 319.064, 335.080, 335.100, 422.317, 434.840 to 434.860,
8 42 CFR 415.208, 431.52, 431 Subpart F

9 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 CFR
10 440.130, 42 USC 1396a-d[, ~~EO 2004-726~~]

11 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9,~~
12 ~~2004, reorganized the Cabinet for Health Services and placed the Department for~~
13 ~~Medicaid Services and the Medicaid Program under the Cabinet for Health and Family~~
14 ~~Services.~~] The Cabinet for Health and Family Services has responsibility to administer
15 the Medicaid program [~~of Medical Assistance~~]. KRS 205.520(3) authorizes [~~empowers~~]
16 the cabinet, by administrative regulation, to comply with any requirement that may be
17 imposed, or opportunity presented, by federal law for the provision of medical
18 assistance to Kentucky's indigent citizenry. This administrative regulation establishes
19 [~~sets forth~~] the provisions for community mental health center (CMHC) services.
20 [~~relating to services provided by Mental Health Centers for which payment shall be~~
21 ~~made by the Medicaid program to both the categorically needy and the medically~~

1 ~~needy-]~~

2 Section 1. Definition of Psychiatric nurse. (1) For the purpose of providing Medicaid
3 Program reimbursable services, registered nurses employed by participating mental
4 health centers shall be considered psychiatric or mental health nurses when they meet
5 any of the following criteria:

6 (a) Master of science in nursing (MSN) with specialty in psychiatric/mental health
7 nursing; additional experience is not required; or

8 (b) Graduate of a four (4) year nursing educational program, with a bachelor of science
9 in nursing (BSN) and with a minimum of one (1) year of experience in a mental health
10 setting; or

11 (c) Graduate of a three (3) year nursing educational program (diploma graduate), and
12 with a minimum of two (2) years of experience in a mental health setting; or

13 (d) Graduate of a two (2) year nursing educational program, with an associate degree
14 in nursing (ADN) and with a minimum of three (3) years of experience in a mental health
15 setting; or

16 (e) Effective July 1, 1989, any level of education with American Nursing Association
17 (ANA) certification as a psychiatric and mental health nurse.

18 (2) Notwithstanding the preceding, Any registered nurse employed by a participating
19 mental health center in Kentucky on June 30, 1981 shall be considered a psychiatric
20 nurse if their employment with the center continues, for the purpose of providing Medicaid
21 program reimbursable services.

22 Section 2. Community Mental Health Manual. The Community Mental Health Manual
23 specifies the conditions for participation, services covered, and limitations for the mental

1 health center services component of the Medicaid Program. ~~[The Community Mental~~
2 ~~Health Manual dated July 1, 1993 is incorporated by reference in this administrative~~
3 ~~regulation and may be reviewed during regular working hours (8 a.m. to 4:30 p.m.~~
4 ~~Eastern Standard Time) in the Office of the Commissioner, Department for Medicaid~~
5 ~~Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained~~
6 ~~from that office upon payment of an appropriate fee which shall not exceed approximate~~
7 ~~cost.]~~

8 Section 3. Covered Services. The following services provided by a participating
9 community mental health center shall be covered if provided in accordance with this
10 administrative regulation and the Community Mental Health Manual, and if they meet all
11 applicable departmental requirements: ~~[mental health centers shall be considered~~
12 ~~covered when rendered within Kentucky Medicaid program guidelines as shown in the~~
13 ~~Community Mental Health Manual:]~~

- 14 (1) Inpatient services;
- 15 (2) Outpatient services;
- 16 (3) Therapeutic rehabilitation services;
- 17 (4) Emergency services; and
- 18 (5) Personal care home services.

19 Section 4. Electronic Documents and Signatures.

20 (1) The creation, transmission, storage, and other use of electronic signatures and
21 documents shall comply with the requirements established in KRS 369.101 to 369.120
22 and all applicable state and federal laws and regulations.

23 (2) A CMHC provider choosing to utilize electronic signatures shall:

1 (a) Develop and implement a written security policy which shall:

2 1. Be complied with by each of the provider's employees, officers, agents and
3 contractors; and

4 2. Stipulate which individuals have access to which electronic signatures and
5 password authorization;

6 (b) Ensure that electronic signatures are created, transmitted and stored securely;
7 and

8 (c) Develop a consent form which shall:

9 1. Be completed and executed by each individual utilizing an electronic signature;

10 2. Attest to the signature's authenticity; and

11 3. Include a statement indicating that the individual has been notified of their
12 responsibility in allowing the use of the electronic signature.

13 (3) A CMHC provider shall submit a copy of the agency's electronic signature policy,
14 the signed consent form, and the original filed signature to the department upon
15 request.

16 Section 5. Appeal Rights.

17 (1) An appeal of a department decision regarding a Medicaid member based upon an
18 application of this administrative regulation shall be in accordance with 907 KAR 1:563.

19 (2) An appeal of a department decision regarding Medicaid eligibility of an individual
20 based upon an application of this administrative regulation shall be in accordance with
21 907 KAR 1:560.

22 (3) An appeal of a department decision regarding a Medicaid provider based upon an
23 application of this administrative regulation shall be in accordance with 907 KAR 1:671.

1 Section 6. Incorporation by Reference.

2 (1) The “Community Mental Health Manual, January 2006 edition” is incorporated by
3 reference.

4 (2) This material may be inspected, copied or obtained, subject to applicable
5 copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor
6 West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

907 KAR 1:044

REVIEWED:

Date

Shannon Turner, J.D., Commissioner
Department for Medicaid Services

Date

Mike Burnside, Deputy Secretary
Cabinet for Health and Family Services

APPROVED:

Date

Mark D. Birdwhistell, Secretary
Cabinet for Health and Family Services

A public hearing on this administrative regulation shall, if requested, be held on March 21, 2006, at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2006, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business March 31, 2006. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, Phone: 502-564-7905, Fax: 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:044
Cabinet for Health Services
Department for Medicaid Services
Agency Contact Person: Stuart Owen (502-564-6204)

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the provisions regarding community mental health center (CMHC) services.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions regarding CMHC services.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions regarding CMHC services.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the provisions regarding CMHC services.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation expands the field of provider types authorized to provide services in community mental health centers and establishes electronic signature requirements.
 - (b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to enhance member and CMHC access to a broader range of qualified mental health providers and to facilitate the modernization of business practices.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by expanding the field of provider types authorized to provide services in community mental health.
 - (d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by expanding the field of provider types authorized to provide services in community mental health.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The affected entities include the fourteen (14) community mental health centers as well as the population they serve.

- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Community mental health centers and the population they serve will experience access to a broader range of mental health professionals.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
 - (a) Initially: The Department for Medicaid Services anticipates no fiscal impact as a result of this amendment.
 - (b) On a continuing basis: The Department for Medicaid Services anticipates no fiscal impact as a result of this amendment.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX, Title XXI and state matching funds from general fund and restricted fund appropriations are the funding sources utilized to implement and enforce this administrative regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding will be necessary to implement the amendment to this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish or increase any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The “equal protection” and “due process” clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES

907 KAR 1:044
Community Mental Health Center Services

Summary of Material Incorporated by Reference

The “Community Mental Health Manual, January 2006 edition” replaces the July 1, 1993 edition. The manual, in conjunction with the regulation, establishes community mental health center service provisions. The total number of pages incorporated by reference for this administrative regulation is 169.

The manual is being revised to expand the field of provider types to enhance member and community mental health center access to qualified mental health professionals. The amendments include as follows:

(1) Section III, Page 3.2 – added licensed clinical social worker, licensed professional clinical counselor, and licensed marriage and family therapist, certified psychologist with autonomous functioning or licensed psychological practitioner to the minimum staffing requirement section and clarified psychiatric nurse qualifications and related in the manual.

(2) Section III, Page 3.3 – clarified psychiatric social worker requirements

(3) Section III, Page 3.5 – added advanced registered nurse practitioner, physician assistant, licensed professional counselor associate, and licensed marriage and family therapist associate to the additional staff.

(4) Section V, Page 5.5 – Inserted electronic signature provisions